

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

HISTORY ASSOCIATES INCORPORATED,

Plaintiff,

v.

U.S. SECURITIES AND EXCHANGE  
COMMISSION,

Defendant.

Case No. 1:24-cv-1858-ACR

**JOINT STATUS REPORT**

Plaintiff History Associates Incorporated and Defendant U.S. Securities and Exchange Commission hereby submit this joint status report in response to this Court’s March 20, 2025, Minute Order. This joint status report concerns four subparts of one of History Associates’ FOIA requests at issue in this case:

<b>Subpart</b>	<b>Description</b>
Subpart 1	All documents and communications that SEC Chair Gary Gensler sent, received, or considered concerning Ethereum’s shift to a proof-of-stake mechanism.
Subpart 2	All documents and communications sent by the SEC to third parties regarding Ethereum’s shift to a proof-of-stake mechanism.
Subpart 3	All documents and communications sent to or by certain SEC officials that discuss or analyze whether Ether is a security or whether transactions in Ether are securities transactions, and that contain keywords related to “proof-of-stake.”
Subpart 4	All documents or communications sent to or by certain SEC officials related to or concerning the decision to close the ETH 2.0 investigation.

On November 8, 2024, this Court directed the SEC to respond to Subparts 1 and 2 within 60 days. Nov. 8, 2024 Minute Order. After being granted an extension by the Court, the SEC

released non-exempt records and provided preliminary *Vaughn* indices on January 7 and January 28, 2025.

On February 4, the parties submitted a joint status report. ECF 26. The parties stated that they disagreed on the adequacy of the SEC's search and the completeness of its production in response to Subparts 1 and 2. History Associates asked the Court to require the SEC to complete its search and produce all responsive documents within 14 days. *Id.* at 4. The SEC stated that it was willing to conduct additional searches and to apply broader responsiveness criteria but that it needed at least 60 days to complete the production. *Id.* at 10-11. The parties also stated that they were negotiating additional document productions beyond Subparts 1 and 2. *Id.* at 1.

On February 11, the parties submitted another joint status report addressing the timeline for the SEC's production of documents in response to Subparts 3 and 4. ECF 27. History Associates asked the Court to require the SEC to produce documents responsive to Subparts 3 and 4 within 60 days. *Id.* at 4. The SEC proposed that, prior to agreeing on a timeline for processing these subparts, the SEC would conduct searches for records, share the volumes of the results of those searches with Plaintiff, and then determine what timelines make sense for the release of records. *Id.* at 5. The SEC proposed that the parties discuss timelines for production once the volumes were determined and then provide the Court with a status update in 30 days. *Id.* at 6. On February 11, this Court ordered the SEC to respond to Subparts 3 and 4 by April 11. Feb. 11, 2025, Minute Order.

On February 21, History Associates submitted a solo status report requesting that the Court order the SEC to complete its production in response to Subparts 1 and 2 by March 7. ECF 28. On February 24, the SEC filed a response to History Associates' status report recommending that,

before any additional deadlines are set, the SEC should obtain more information about the volume of additional documents responsive to subparts 1, 2, 3, and 4. ECF 29 at 2.

On March 20, this Court ordered the parties to submit a joint status report on March 27. The parties have extensively discussed the scope and timing of the SEC's productions but have been unable to reach agreement as to the timing of the SEC's productions in response to Subparts 1, 2, and 3. The parties set forth their positions on those matters below.

### **History Associates' Position**

Since submitting the three FOIA requests at issue in this case to the SEC in mid-2023 (only one of which is the genesis for Subparts 1 to 4), History Associates has been met with consistent delay and obstruction from the agency. The SEC failed at the outset to conduct the document-by-document review mandated by FOIA. *See CREW v. DOJ*, 746 F.3d 1082, 1098 (D.C. Cir. 2014) (agency asserting Exemption 7(A) must conduct a "document-by-document review"). Instead, it issued a blanket denial based on a FOIA exemption tied to ongoing investigations that is inherently temporally limited. After being sued, the agency asserted that it would need three years even to begin the FOIA review that it should have conducted in the first place. This Court rejected that proposal and instead imposed a reasonable production schedule for the agency to begin redressing its failure, without keeping History Associates in FOIA purgatory, by prioritizing and processing targeted subparts of the records for one of History Associates' requests.

The SEC has now failed to comply with multiple court orders—let alone FOIA's own time limitations. Most recently, on February 11, this Court ordered the agency to respond to Subparts 3 and 4 within two months, by April 11—rejecting the SEC's request to defer setting any production deadline. But the agency now says it will not comply as to Subpart 3 and will instead put it at the end of the agency's FOIA queue—effectively treating this Court's order to produce documents the SEC should have processed already as if it were a new FOIA request—which would

result in years of delay by the agency’s own prior estimates. The Court has now twice rejected the SEC’s position that its own failures and delay should send History Associates to the back of the line. The agency’s concerns about the volume of responsive documents—concerns that it could and should have raised long ago—cannot justify noncompliance with court orders. Moreover, the SEC still has not yet complied with this Court’s November 8 order requiring the agency to respond to Subparts 1 and 2 in January 2025. Even after receiving an extension, the agency failed to conduct an adequate search and unilaterally withheld responsive documents—deficiencies it still has not remedied.

This Court’s intervention is needed to break the agency’s pattern of delay. History Associates respectfully requests that the Court require the SEC to produce documents on the timelines outlined below.

### **The SEC Is Refusing to Comply with the Court’s Directives as to Subpart 3**

*The SEC’s proposal defies this Court’s orders.* On February 11, this Court gave the SEC two months—until April 11—to respond to Subparts 3 and 4. *See* Feb. 11, 2025 Minute Order. Now, however, the SEC has unilaterally determined that it will respond only to Subpart 4 by April 11. As for Subpart 3, the agency says it will put that subpart on the agency’s “complex track” and seek an *Open America* stay due to the volume of responsive documents. Ex. 2 at 3. By the SEC’s own prior estimate, that means the agency would start processing Subpart 3 “approximately three years” from now. ECF 20 at 3.

The SEC’s approach flouts this Court’s directives twice over. On November 8, this Court rejected the very same three-year “complex track” proposal the agency is seeking to reinstitute now. *See* ECF 22 at 4 (“I’m not going to give you three years to figure this out.”). And on February 11, the Court rejected the SEC’s proposal to delay its production of Subpart 3 while the

agency ascertained the volumes of responsive documents and instead ordered the agency to respond to *all* of Subpart 3 by April 11. The SEC acts as if this Court's orders are mere suggestions and that the agency can simply start over at square one every time another failure in its handling of a FOIA request is identified.

***The SEC's purported burden is self-inflicted.*** History Associates does not believe that any extension of the April 11 deadline is warranted. As an initial matter, the SEC should have reviewed these documents *before* it denied History Associates' FOIA request more than a year ago. *CREW*, 746 F.3d at 1098 (agency asserting Exemption 7(A) must conduct a "document-by-document review"); ECF 24-1 at 4 (Court: "I'm a little bit at a loss as to why you all thought that you could just do a 7(A) analysis on the first go-around and then ... do the actual FOIA review.") Any inconvenience the SEC now faces is a problem of its own making, resulting from its decision to issue a near-blanket denial of the FOIA requests based on Exemption 7(A) without actually reviewing the records.

The SEC has compounded the delays by dragging its feet since this Court's February 11 order. In that order, the Court gave the SEC two months to produce documents responsive to Subpart 3, rejecting the SEC's proposal that the Court give the agency a month to determine volumes of responsive documents without setting a deadline for production. Yet the agency has apparently proceeded as if its proposal had prevailed. It waited until March 5—more than three weeks after the Court's order—to provide History Associates a partial estimated document hit count, suggesting for the first time that the agency might seek an extension of the April 11 deadline due to the document volumes it was belatedly uncovering. Ex. 1 at 10-11. The agency offered no explanation for its delay, and even now it does not adequately explain why it took weeks to conduct a search. *See generally infra* at 10-16. If the agency had concerns about the breadth of Subpart 3,

it should have brought them to the Court's and History Associates' attention immediately after the Court's February 11 order.

***The SEC has rejected reasonable accommodations.*** Notwithstanding the SEC's lack of diligence, History Associates has attempted to accommodate the agency's purported burden. On March 6, History Associates told the SEC that it might be able to prioritize Subpart 3 still further by targeting specific custodians if the agency gave History Associates a list of SEC officials implicated by the request. Ex. 1 at 9-10. History Associates made clear that it would seek production of documents pertaining to at least five former SEC officials—Gary Gensler, Jaime Lizárraga, Caroline Crenshaw, Gurbir Grewal, and David Hirsch—and that any further discussions between the parties should not delay the SEC's review of those documents.

History Associates has since agreed to allow the SEC to stagger its production in response to Subpart 3. Under History Associates' proposal, the SEC would produce all documents pertaining to the five aforementioned officials by April 11, followed by at least 5,000 documents pertaining to another subset of officials by May 12.<sup>1</sup> After the May 12 production, History Associates would decide whether to seek further productions in response to Subpart 3, and the parties would file a joint status report by May 26. Ex. 2 at 4-5.

The SEC, however, has refused even this reasonable accommodation, claiming it is still too burdensome and that the agency plans to review no more than 500 documents per month. Ex. 2 at 2-3. But this Court ordered the agency to respond to *all* of Subpart 3 by April 11—an order the agency could have complied with had it begun this review more than a month ago (and certainly

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<sup>1</sup> These officials include at least: Allison Lee; Amanda Fischer; Slavkin Corzo; Heather Lynn; Prashant Yerramalli; Anna Corina Klemmer; Lisa Kinney Helvin; Samantha Jill Ostrom; Victor Suthammanont; Jillian Harris; Stephanie Avakian; Sanjay Wadhwa; Kistrina Littman; Laura D'Al-laird; Mark Sylvester; Valerie Szczepanik; Erik Gerding; Corey Frayer; William Hinman.

if it had done so before denying History Associates’ request more than a year ago). The SEC’s purported burden is also overstated and self-imposed. The record counts the agency relies on include every document for every custodian containing the relevant search terms, but History Associates has told the agency: (1) that it is willing to agree to the production of documents for just five custodians by April 11 and another subset of custodians by May 12, at which point the parties can revisit whether further productions are necessary; and (2) History Associates is open to excluding from the production categories of documents that do not bear on Ether’s status. Ex. 2 at 4-5. Moreover, History Associates has repeatedly proposed that the agency use standard search techniques to limit false positives and thereby reduce the volume of documents the agency needs to review (*e.g.*, putting spaces around the search terms “ ETH ” to avoid capturing words like “whether”). But the SEC has failed to implement those well-accepted time-saving techniques. The SEC claims that the burden is still “unreasonable and unworkable” (*infra* at 12) but does not explain why, and its protestations should carry little weight in light of its dilatory conduct to date. Courts have imposed comparable timetables under these circumstances. *See, e.g., NRDC v. Dep’t of Energy*, 191 F. Supp. 2d 41, 42-43 n.5 (D.D.C. 2002) (requiring production of the “vast majority” of 7,500 pages of records in just over a month when agency had “been woefully tardy in its processing of Plaintiff’s FOIA request”).

***The Court should at least require the SEC to make staggered productions.*** The SEC has provided no sound justification for failing to fully and timely comply with the Court’s February 11 order. If the Court does not require a full response to Subpart 3 by April 11, the Court should at least require the SEC to make the aforementioned staggered productions that History Associates has proposed to the agency.

### **The SEC's Responses to Subparts 1 and 2 Have Been Similarly Inadequate**

*The SEC has yet to comply with this Court's November 8 order.* On November 8, this Court ordered the SEC to respond to Subparts 1 and 2 by January 7, a deadline that the Court later extended to January 28 at the SEC's request. *See* Nov. 8, 2024 Minute Order; Dec. 27, 2024 Minute Order. But as History Associates has explained in prior status reports, the SEC's production was incomplete for at least two reasons. ECF 26, 28. First, the SEC's search for responsive documents was inadequate. ECF 26 at 4-6. The SEC limited its search to emails (omitting other relevant databases) and used arbitrary and incomplete keyword searches (despite having used similar words in its own subpoenas). *Id.* Second, and even more troublingly, the SEC's production of documents was incomplete because the agency unilaterally narrowed the scope of documents it deemed responsive. *Id.* at 6-8. The SEC improperly produced only "records that more substantively discussed Ethereum's shift to a proof-of-stake mechanism"; the agency unilaterally "deemed as not responsive" and withheld "records that mentioned that the shift had occurred or would occur but focused on other subjects." *Id.*

In the February 4 joint status report, the SEC agreed to conduct the complete review and production in response to Subparts 1 and 2 and suggested that it could do so within 60 days, which would have been April 5. ECF 26 at 10. But nearly 60 days later, and more than four months after the Court's November 8 order, the SEC has evidently made little progress. After proposing keyword searches on February 13, it did not provide initial document hit counts until February 27 (for Subpart 1) and March 12 (for Subpart 2), and did not provide final hit counts (using de-duplication techniques it could have employed from the outset) until March 20. The SEC thus has shown yet again that it will not act expeditiously unless compelled to do so by a court order.



***The Court should at least require staggered productions.*** This Court should require, at a minimum, that the SEC respond in full to Subpart 1 by April 11. That is more than 60 days since the February 4 joint status report, in which the agency suggested that it could respond to the entirety of Subparts 1 and 2. The SEC has said that there are only 350 documents responsive to Subpart 1, and the agency likely already has reviewed and produced some (if not most) of those documents in making its January 7 and 28 productions.

As for Subpart 2, the Court should require the agency, by May 12, to review and produce at least 5,000 new documents—that is, documents the SEC did not already review and produce (or withhold) in making the January 7 and 28 productions. After the May 12 production, History Associates would decide whether to seek further productions in response to Subpart 2, and the parties would file a joint status report by May 26.

\* \* \*

History Associates is not asking that its “requests be processed immediately and be given precedence over all other FOIA requests.” *Infra* at 14. It has been around 20 months since History Associates filed the requests at issue here; more than 13 months since those requests were categorically denied; and 9 months since History Associates filed this lawsuit. History Associates is simply asking that the SEC be required to comply with this Court’s orders and promptly conduct a small part of the review that it should have completed over the last nearly two years, rather than be permitted to act as if History Associates were filing a brand new FOIA request today. History Associates therefore respectfully requests that this Court order the SEC to produce documents responsive to Subparts 1 to 4 on the below schedule.

Production Date	Description
April 11, 2025	Complete Response to Subpart 1 Complete Response to Subpart 4 Partial Response to Subpart 3 (documents sent by or to Gary Gensler, Jamie Lizárraga, Caroline Crenshaw, Gurbir Grewal, and David Hirsch)
May 12, 2025	Partial Response to Subpart 2 (at least 5,000 documents that the agency has not yet produced or withheld) Partial Response to Subpart 3 (at least 5,000 documents sent to or by the custodians specified in footnote 1, <i>supra</i> )
May 26, 2025	Joint Status Report

### **SEC's Position**

Plaintiff's description of this case ignores the significant burden that it is placing on the SEC's staff. Plaintiff presumes that running complex searches for records and reviewing and redacting tens of thousands of pages requires no more than typing in a few phrases into a search bar and glancing through pages without preparing those records for public release by taking time to look for and redact personal identifying information, other information in which individuals may have a privacy interest, confidential commercial and financial information, and privileged information. The SEC has endeavored to gather and review the documents Plaintiff seeks and has sought to work with Plaintiff to narrow the scope of the documents to be reviewed to avoid unnecessary motions in court, but Plaintiff instead repeatedly states that the SEC should have reviewed

all documents a year ago (without providing any legal support for that contention<sup>2</sup>) and declines to work with SEC staff to narrow searches so that the SEC could gather and review documents within the time periods set by the Court. The SEC respects the time deadlines ordered by the Court and has sought to comply with them by working with Plaintiff to narrow the searches and preparing to move for more time if narrowing was not possible.<sup>3</sup> The status of each subpart is explained below.

***Narrowed subparts 1 and 2.*** During the parties' November 8, 2024 conference with the Court, the Court noted, and Plaintiff's counsel agreed, that narrowed subparts 1 and 2 should be "an initial, small subset of things." ECF 24-1 at 17:17-22. On January 7 and 28, 2025, the SEC issued responses to those subparts. Specifically, in response to narrowed subpart 1, the SEC released to Plaintiff one page in part and withheld in full 718 pages of records. In response to narrowed subpart 2, the SEC released to Plaintiff 1,217 pages in part and withheld in full 6,970 pages. The SEC also provided Plaintiff with preliminary *Vaughn* Indices addressing withholdings.

As stated in the parties' previous joint status reports, the SEC conducted reasonable searches for records and applied reasonable responsiveness criteria to the records returned by its searches based on discussion during the November 8, 2024 conference. *See* ECF 26 at 8-10. Nevertheless, Plaintiff contested aspects of the SEC's searches for records and the responsiveness cri-

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<sup>2</sup> Plaintiff's parenthetical (*supra* at 3) stating an "agency asserting Exemption 7(A) must conduct 'a document-by-document review'" is inapposite. The cited case addresses an agency's burden in court, not at the administrative stage, and requires a review designed to identify functional categories of records being withheld under Exemption 7(A), not to determine applicable exemptions. *See CREW v. DOJ*, 746 F.3d 1082, 1098 (D.C Cir. 2014).

<sup>3</sup> Because of this Court's order requiring a Joint Status Report, the SEC has not yet filed a motion addressing the fact that the April 11, 2025 deadline was not feasible for subpart 3.

teria that the SEC applied. In response to Plaintiff's concerns, the SEC offered to conduct additional searches and to apply broader responsiveness criteria in an additional records review. *See* ECF 26 at 9-10.

With respect to subpart 1, the SEC is currently processing the approximately 400 additional records that may be responsive to this request. The SEC will provide the additional response as soon as possible, but it needs to review the documents for exempt information, and that review will require consultations with divisions and offices within the SEC. The SEC respectfully requests that, should the Court set a deadline for release, the deadline be set for May 9, 2025.

With respect to subpart 2, based on discussions with Plaintiff, the SEC ran additional searches to identify records potentially responsive to subpart 2. After applying agreed-upon search terms and threading the results, the SEC has identified a universe of approximately 39,500 records including families, comprised of over 354,000 pages of material, that may be responsive to subpart 2. Undersigned counsel understands that Plaintiff seeks every record that hits on the search terms. Plaintiff's request that the SEC "review and produce at least 5,000 new documents" by May 12 is unreasonable and unworkable.<sup>4</sup> As discussed below, given the volume of records that Plaintiff seeks, the SEC will seek from the Court more time to process the records through an *Open America* motion.

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<sup>4</sup> Plaintiff's cited case (*supra* at 7) is distinguishable from the present circumstances. There, the agency "made an initial release of 33 documents," released "[n]o other records" in the subsequent ten months after the FOIA request was submitted, and only "2,149 documents" were deemed responsive to the FOIA request. *NRDC v. DOE*, 191 F. Supp. 2d 41, 42-43 (D.D.C. 2002). In contrast, the SEC issued responses to the FOIA requests at issue in this case in 2023 (ECF 20 at 2), has processed thousands of pages of records and provided preliminary *Vaughn* Indices since this case was filed, and has identified tens of thousands of additional potentially responsive records. Notably, the Court in *NRDC* recognized that "it is commonly accepted that no federal agency can meet the impossibly rigorous timetable set forth in the statute." *NRDC*, 191 F. Supp. 2d 41 at 42.

*Narrowed subpart 3.* Narrowed subpart 3 seeks all documents and communications sent to or by over 140 staff, as reflected in a list of custodians that the SEC shared with Plaintiff. Plaintiff also seeks records from a seven-year time period, from January 1, 2018 through the date of the search. After applying agreed-upon search terms and threading the results, the SEC has identified a universe of approximately 78,000 records that may be responsive to subpart 3.

On February 5, 2025, Plaintiff requested that the SEC process subparts 3 and 4, and, on February 7, the SEC proposed that, prior to agreeing on a timeline for processing, the SEC would conduct the searches for records, share the volumes of the results of those searches with Plaintiff, and then determine what timelines make sense for the release of records. The SEC has repeatedly recommended that the parties work together to determine a release timeline that makes sense in light of the large volumes of potentially responsive records. Further, in both the February 11 and 24 status reports, the SEC expressed concern about setting a timeline for release prior to determining the volume of potentially responsive records. *See* ECF 27 at 6 (“setting a timeline for release now is not workable given the scope of subpart 3”); ECF 29 at 6 (“SEC recommends that, before any additional deadlines are set, it should obtain more information about the volume of additional documents responsive to subparts 1 and 2 (as well as to subparts 3 and 4) . . .”). On February 11, 2025, the Court ordered that the SEC issue a response to subpart 3 by April 11, 2025.

At the time of the Court’s order, the SEC had not yet completed its searches for potentially responsive records. As the SEC informed Plaintiff, conducting searches for records takes time. SEC staff who run email searches receive requests for many searches and cannot immediately run all new search requests, SEC staff processing FOIA requests cannot obtain access to emails until steps are taken to assure they are not receiving confidential information that they should not have, and ingesting large amounts of data into the SEC’s document review platform takes time. When

the SEC ascertained the volume of records potentially responsive to subpart 3, it shared those results with Plaintiff and has sought to come to an agreement with Plaintiff about responsiveness criteria and potential ways of narrowing the universe of records that the SEC must process. Undersigned counsel understands that Plaintiff has not agreed to narrow the request. Plaintiff says above only that it “might be able to prioritize” 23 custodians for subpart 3, not narrow the number of custodians whose records the SEC must process. The subsets of custodians that Plaintiff seeks by April 11 and May 12 involve thousands of records. Plaintiff has stated: “If, as the SEC reviews responsive documents, it finds that there are discrete categories of documents that do not bear on the question of Ether’s status and would be burdensome to review, we can consider those. But otherwise, we would like the SEC to produce all documents containing the keywords we’ve provided.” But such narrowing might occur only after the SEC has reviewed a large volume of records.

***Narrowed Subpart 4.*** The SEC will issue a response to subpart 4 by April 11, 2025.

***Status of Discussions and Proposed Next Steps.*** Plaintiff’s expectation that its FOIA requests be processed immediately and be given precedence over all other FOIA requests is not realistic.<sup>5</sup> All staff involved in processing Plaintiff’s requests have other responsibilities and deadlines: staff in the SEC’s Office of Information Technology handle email searches for all divisions and offices within the SEC, including searches for FOIA requests and for discovery related to

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<sup>5</sup> Plaintiff claims that the SEC “should have completed [its review] over the last nearly two years” (*supra* at 9) but the SEC responded to the three FOIA requests at issue in August 2023 and October 2023, and provided additional information on appeal in December 2023, January 2024, and February 2024, based on determinations made at the time of those responses. “The FOIA does not require [the SEC] to update or supplement a prior response to a request for records” (*James v. U.S. Secret Serv.*, 811 F. Supp. 2d 351, 358 (D.D.C. 2011)), so the SEC had no obligation to revisit those determinations after issuing its appeal decisions. In responding to this lawsuit filed in June 2024, the SEC reassessed its responses to the FOIA requests in light of developments in SEC investigations that occurred after the SEC’s administrative review.

Commission enforcement actions; staff in the SEC's Office of FOIA Services process thousands of FOIA requests each year; attorneys handling this litigation must balance this case with other responsibilities and deadlines in other cases; and staff throughout the Commission, including in the Office of the Chairman, have many other demands on their time. The SEC has provided Plaintiff with search results, hit counts for search terms and a large volume of custodians, and additional information requested by Plaintiff (which has required many individual manual searches through the SEC's document review platform). Specifically, the SEC provided search results for subpart 1 on February 27, for subpart 3 on March 5, and for subpart 2 on March 12, and provided additional hit count information on March 7, 12, and 20. The SEC has also communicated with Plaintiff about ways to target records more likely to be responsive and has responded to Plaintiff's concerns, including about whether adding spaces before and after search terms modifies hit counts.

In terms of next steps, the SEC proposes the following. With respect to subpart 1, the SEC respectfully requests that, should the Court wish to set a deadline for release, that deadline be set for May 9, 2025. With respect to subparts 2 and 3, the SEC believes it must move for an *Open America* stay of proceedings so that it may have more time to process these requests. *See Open America v. Watergate Special Prosecution Force*, 547 F.2d 605, 616 (D.C. Cir. 1976) (holding that "exceptional circumstances" exist when an agency can show that it "is deluged with a volume of requests for information vastly in excess of that anticipated by Congress, when the existing resources are inadequate to deal with the volume of such requests within the time limits of subsection (6)(A), and when the agency can show that it 'is exercising due diligence' in processing the requests"). Plaintiff appears to seek all records that hit on the requested search terms, and even limiting subpart 3 to certain custodians would require the processing of many thousands of records on an unworkable timeline. In these circumstances, a maximum of 500 pages of records per month

would be an appropriate processing rate. *See, e.g., Rolling Stone LLC v. U.S. Dep’t of Just.*, No. 23-CV-10741, 2024 WL 3862521, at \*3 (S.D.N.Y. Aug. 19, 2024) (processing records at 500 pages per month is “a fairly standard” rate). As Judge Reyes noted during the parties’ November 8, 2024 appearance, if Plaintiff “want[s] anything that’s been said about [Ethereum’s shift to a proof-of-stake mechanism], that’s fine, but [Plaintiff is] not going to get anything for quite a while.” ECF 24-1 at 15:11-14.

The SEC respectfully requests that, in light of the volume of records potentially responsive to subparts 2 and 3, the Court hold in abeyance the April 11, 2025 deadline for the SEC to issue a response to subpart 3, decline to enter a scheduling order for the additional response to subpart 2, and enter an order that the parties submit a proposed briefing schedule for the SEC’s *Open America* brief by April 3, 2025.

Date: March 27, 2025

/s/ Jonathan C. Bond

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Respectfully submitted,

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*Attorney for Defendant*



# **Exhibit 1**

[REDACTED]

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**From:** Harper, Nick  
**Sent:** Wednesday, March 19, 2025 2:39 PM  
**To:** Verdi, Alexandra  
**Cc:** Bond, Jonathan C.  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

Thanks Alex.

**Nick Harper**  
Partner

[REDACTED]

**GIBSON DUNN**  
Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

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**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Wednesday, March 19, 2025 5:08 PM  
**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

**This Message Is From an External Sender**  
This message came from outside your organization.

Hi Nick,

We have been working on gathering this information, and I aim to send it over tomorrow.

Best,  
Alex

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**From:** Harper, Nick [REDACTED]  
**Sent:** Wednesday, March 19, 2025 10:59 AM  
**To:** Verdi, Alexandra [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Alex,

Following up on my email below, can you let us know the updated document hit counts for subparts 1-3?

Best,  
Nick

**Nick Harper**  
Partner

[REDACTED]

**GIBSON DUNN**  
Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

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**From:** Harper, Nick  
**Sent:** Friday, March 14, 2025 11:42 AM  
**To:** 'Verdi, Alexandra' [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

Thanks Alex. We understand this to be a standard e-discovery practice and are uncertain why the SEC has not employed this practice from the beginning. Please do thread the records for subparts 1-3 and let us know ASAP the updated document hit counts for each subpart.

Best,

Nick

**Nick Harper**

Partner

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP

1700 M Street, N.W., Washington, D.C. 20036-4504

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**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Friday, March 14, 2025 9:13 AM  
**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

Hi Nick,

There is a function in our document review platform that threads emails by analyzing metadata in the subject, from, to and sent date fields, as well as the text in the body of the email, to create a thread group. It then groups emails in a thread together so that we can review the entire thread at once. This would allow us to identify and process only the complete email threads, which would be faster and more efficient than processing each individual email in a thread. The function lets us see which emails within a thread contain attachments, so we would be able to include those unique emails and their attachments even if they are within a longer thread.

Best,  
Alex

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**From:** Harper, Nick [REDACTED]  
**Sent:** Wednesday, March 12, 2025 4:30 PM  
**To:** Verdi, Alexandra [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

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Thanks very much, Alex. Can you provide a bit more information on what you mean by “threading the records”? If that is a mechanism for de-duplicating without increasing the risk of errors and/or missing responsive documents, that’s something we might consider. It also would be good to know if that alternative is available for prioritized subpart 3.

Thanks,  
Nick

**Nick Harper**  
Partner

[REDACTED]

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

---

**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Wednesday, March 12, 2025 4:03 PM  
**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

Nick,

I am attaching a list of the custodians Plaintiff requested for narrowed subpart 3.

It does not appear that we will resolve our dispute about the timeline for processing narrowed subpart 3. As such, we will focus our efforts on preparing a motion to the Court.

Additionally, here is an overview of the searches returned for the re-run narrowed subparts 1 and 2.

Narrowed subpart 1:

Records Searched	Hits on “Ethereum”, “ETH”, or “Ether”	Hits on Additional Search Terms
Chair Genster’s Emails	3,482 records (including families)	Proof w/3 stake : 499 records with families

		"PoS" : 449 records with families "the Merge" : 441 records with families "EIP-3675" : 0 records TOTAL: 1,389 records including families
Calendar	56 records	
Microsoft Teams Chats	0 records	

Narrowed subpart 2:

Records Searched	Hits on "Ethereum", "ETH", or "Ether"	Hits on Additional Search Terms
SEC staff to external email addresses	121,512 records (including families)	Proof w/3 stake : 3898 records with families "PoS" : 18120 records with families "the Merge" : 30408 records with families "EIP-3675" : 26 records with families TOTAL: 52,324 records including families

For narrowed subparts 1 and 2, given the high volume of returned records, I think further narrowing through modified search terms is warranted. Here are some initial proposals (though these alone do not narrow the documents sufficiently to allow a review that could be completed soon). Another way we could narrow the large volume of returned records is by threading the records so that we review and release only unique emails and attachments.

- Subpart 1: " PoS " W/10 (Ethereum OR Ether OR Eth) → 138 records with families
- Subpart 2: "merge" W/10 (Ethereum OR Ether OR Eth) → 133 records with families
- Subpart 2: " PoS " W/10 (Ethereum OR Ether OR Eth) → 605 records with families
- Subpart 2: "merge" W/10 (Ethereum OR Ether OR Eth) → 878 records with families

Best,  
Alex

---

**From:** Harper, Nick [REDACTED]  
**Sent:** Tuesday, March 11, 2025 9:07 AM  
**To:** Verdi, Alexandra [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

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Thanks Alex. On the remaining custodians, if there is a list of names and titles you can provide us in the interim, that would be helpful.

As for the records for the five custodians listed below, we cannot agree to ill-defined or overly broad exclusions, particularly given the SEC's decision to apply what we view as arbitrary responsiveness criteria in response to subparts 1 and 2. If, as the SEC reviews responsive documents, it finds that there are discrete categories of documents that do not bear on the question of Ether's status and would be burdensome to review, we can consider those. But otherwise, we would like the SEC to produce all documents containing the keywords we've provided. If it has not done so already, the SEC might reduce the number of hits by deduplicating and removing documents it has already reviewed in response to subparts 1 and 2, or that it will review in response to subpart 4.

Best,  
Nick

**Nick Harper**  
Partner

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

---

**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Monday, March 10, 2025 4:58 PM  
**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

Hi Nick,

It will take several days for me to provide the hit counts for all of the custodians for search 3. I gather that information by running manual searches, so it takes some time.

The five custodians you identified have a total of over 14,100 records that hit on the search terms. That volume alone would mean that this subpart qualifies for processing in the Complex track. If Plaintiff does not intend to narrow this subpart and seeks every record of all requested custodians that contains the search terms, along with its family members, then we will have to seek additional time from the Court. Narrowing the request to a manageable scope would mean that we could focus our efforts on processing the request rather than preparing a motion for an extension from the Court.

Best,

Alex

---

**From:** Harper, Nick [REDACTED]  
**Sent:** Monday, March 10, 2025 8:59 AM  
**To:** Verdi, Alexandra [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

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Thanks Alex. For subpart 3, we are seeking all documents containing those search terms. On the custodians, could you please initially provide us a list of the names and positions/titles of the custodians and then follow up with the hit counts when they are available? We need only the "total hits" for each custodian. Can you let us know when you expect to be able to provide the hit counts?

As mentioned below, these discussions regarding potential further prioritization should not further delay the agency's review of documents that are responsive to subpart 3, including all documents for the five custodians identified below.

Thanks,  
Nick

**Nick Harper**  
Partner

[REDACTED]

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

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**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Friday, March 7, 2025 4:59 PM  
**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches



Hi Nick,

We are moving forward with the processing of subpart 4 and anticipate providing a response by April 11.

With respect to subpart 3, below are the hit counts for the five specific custodians you noted. Does Plaintiff seek every document that hits on the additional search terms, or is there particular responsive criteria that Plaintiff seeks? For example, is Plaintiff seeking documents from external parties like the New York Times or Politico or media reports that sent out email blasts, or public filings in unrelated litigations that happen to contain the search terms?

In terms of providing further information about custodian hits, I believe there are about 150 custodians for subpart 3 due largely to Plaintiff's request for the correspondence belonging to Commissioners' counsel, so we can provide you with the hit counts for the remaining custodians but it'll take us some time to put that together. I can also provide the list of custodians and you can see who from that list you would like us to include.

Best,  
Alex

<b>Custodian</b>	<b>Records with hits on "Ethereum", "ETH", or "Ether"</b>	<b>Records with hits on additional search terms</b>
Former Chair Gensler	476 records (1044 records with family)	Proof w/3 stake: 47 records (97 records with family) "PoS": 66 records (252 records with family) "the Merge": 36 records (87 records with family) "EIP-3675": 0 records TOTAL HITS: 149 records (436 records with family)
Former Commissioner Jaime Lizárraga	692 records (1834 records with family)	Proof w/3 stake: 76 records (199 records with family) "PoS": 33 records (179 records with family) "the Merge": 41 records (258 records with family) "EIP-3675": 0 records TOTAL HITS: 150 records (636 records with family)
Commissioner Caroline Crenshaw	1254 records (2138 records with family)	Proof w/3 stake: 62 records (175 records with family) "PoS": 51 records (174 records with family) "the Merge": 84 records (138 records with family) "EIP-3675": 3 records (7 records with family) TOTAL HITS: 200 records (494 records with family)
Gurbir Grewal	5375 records (16,400 records with family)	Proof w/3 stake: 677 records (2241 records with family) "PoS": 388 hits (2123 records with family) "the Merge": 723 records (2369 records with family) "EIP-3675": 2 records (8 records with family) TOTAL HITS: 1796 records (6741 records with family)

David Hirsch	10689 records (19,175 records with family)	Proof w/3 stake: 1390 records (3042 records with family) “PoS”: 513 records (1482 records with family) “the Merge”: 572 records (1273 records with family) “EIP-3675”: 13 records (33 records with family) TOTAL HITS: 2488 records (5830 records with family)
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**From:** Harper, Nick [REDACTED]  
**Sent:** Thursday, March 6, 2025 5:13 AM  
**To:** Verdi, Alexandra [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

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Alex,

With respect to subparts 1 and 2, please update us on the production timeline as soon as possible, and please exclude any documents already reviewed or released.

With respect to subparts 3 and 4, we continue to be very concerned that the SEC is not acting with sufficient promptness in response to our requests and the Court’s orders. On February 11, this Court ordered the agency to produce documents responsive to prioritized subparts 3 and 4 of our Ethereum request within 60 days. Yet now, more than three weeks later, it appears the agency is just starting to run scoping searches for subpart 3. Any concerns about the breadth of subparts 3 or 4 should have been brought to the Court’s and our attention weeks ago; moreover, the parties specifically disputed in the prior February 11 status report whether the Court should set a deadline for the SEC to produce documents or merely to determine volumes, and the Court (in an order the same day) ordered the former. The concerns you have raised regarding volumes do not, in our view, justify extending or staying the Court’s April 11 deadline.

Nevertheless, History Associates is willing to consider further prioritizing portions of subparts 3 and 4 (without narrowing its requests) by custodian if you can promptly provide us the information we would need to make those prioritization decisions. To that end, please provide us by the end of this week the record counts for each of subparts 3 and 4 broken down by custodian. At a minimum, however, we will be seeking documents responsive to subparts 3 and 4 that were sent to or by Gary Gensler, Jaime Lizárraga, Caroline Crenshaw, Gurbir Grewal, and David Hirsch. Any discussions regarding further prioritization should not further delay the agency’s review of those documents.

Finally, to further reduce false positives, you might consider adding spaces around the search terms “ETH,” “Ether,” and “the Merge,” if you have not already done so.

Best,

Nick

Nick Harper  
Partner

**GIBSON DUNN**  
Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

From: Verdi, Alexandra [REDACTED]  
Sent: Wednesday, March 5, 2025 3:38 PM  
To: Harper, Nick [REDACTED]  
Cc: Bond, Jonathan C. [REDACTED]  
Subject: RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

Hi Nick,

With respect to your questions about narrowed subpart 1, the overview of hits does not omit records that we have already reviewed or released, and the hit counts reflect a search for “ PoS ” (with the spaces). I will provide an overview of the search results of the subpart 2 re-run as soon as they are available.

With respect to narrowed subpart 3, we agreed to run a search for all email correspondence for the requested custodians containing the search terms “Ethereum”, “ETH”, or “Ether” from January 1, 2018 through present. We also agreed that, within that universe, we would search for the terms: proof w/3 stake, “ PoS ”, “the Merge”, and “EIP-3675”. We are conducting searches of some additional custodians to meet the requested criteria, but this is an overview of the results to date:

Records Searched	Hits on “Ethereum”, “ETH”, or “Ether”	Hits on Additional Search Terms
Emails	356,422 records (including families)	Proof w/3 stake → 13,818 records (34,394 records with families) “ PoS ” → 8,590 records (28,512 records with families) “the Merge” → 11,537 records (30,879 records with families) “EIP-3675” → 61 records (151 records with families)

Given this high volume of results, I would like to clarify what records Plaintiff seeks. If Plaintiff seeks all of these records, then we will need more time to process them and will ask the Court to significantly extend (or stay) the April 11 deadline. Alternatively, does Plaintiff have a proposal of how to narrow these results into a more manageable universe of records (perhaps by custodians or more narrow responsiveness criteria)?

Best,  
Alex

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**From:** Harper, Nick [REDACTED]  
**Sent:** Tuesday, March 4, 2025 9:50 AM  
**To:** Verdi, Alexandra [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC - Results for narrowed subpart 1 additional searches

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Thanks Alex. Do the record counts below omit documents that you have already produced or decided to withhold in response to subpart 1? And as we previously discussed, were you able to search for " PoS " (i.e., PoS with spaces around the letters) to try to avoid false positives?

Also, do you have an update on the record counts for subpart 2? If not, do you know when you will be able to provide a record count and a proposed timeline for processing the documents responsive to subparts 1 and 2?

Best,  
Nick

**Nick Harper**  
Partner

[REDACTED]

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

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**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Thursday, February 27, 2025 3:10 PM

**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** History Associates v. SEC - Results for narrowed subpart 1 additional searches

Hi Nick,

I'm writing with an update on the volume of results for the additional searches for narrowed subpart 1. We agreed to run additional searches for all email correspondence and Microsoft Teams messages to/from Chair Gensler containing the search terms "Ethereum", "ETH", or "Ether" from January 1, 2018 through present. We also agreed that, within that universe, we would search for the terms: proof w/3 stake, "PoS", "the Merge", and "EIP-3675".

Records Searched	Hits on "Ethereum", "ETH", or "Ether"	Hits on Additional Search Terms
Emails	3,482 records (including families)	Proof w/3 stake → 261 records (499 records with families) "PoS" → 169 hits (449 records with families) "the Merge" → 269 hits (441 records with families) "EIP-3675" → 0 hits
Calendar	56 records	
Microsoft Teams Chats	0 records	

I will share information about the searches for subparts 2, 3, and 4 as soon as it is available. Once we have those volumes, I will make a proposal about timelines for processing.

Best,  
Alex

**Alexandra Verdi**  
Office of the General Counsel



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## **Exhibit 2**



[REDACTED]

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**From:** Harper, Nick  
**Sent:** Wednesday, March 26, 2025 10:37 AM  
**To:** Verdi, Alexandra  
**Cc:** Bond, Jonathan C.  
**Subject:** RE: History Associates v. SEC  
**Attachments:** HAI v. SEC - March Status Report.docx

Alex,

Thanks for your response. I don't think the issue is that we are talking past one another; I think we simply have different understandings of the SEC's responsibilities under FOIA and the Court's orders. I've attached a draft joint status report (due tomorrow), which lays out our position on next steps and leaves a placeholder for the SEC's position. Let us know your edits as soon as you can.

Best,  
Nick

**Nick Harper**  
Partner

[REDACTED]

**GIBSON DUNN**  
Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

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**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Tuesday, March 25, 2025 9:10 PM  
**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC

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Hi Nick,

I am concerned that we are talking past each other as we are trying to navigate a path forward. Taking a step back, as permitted under the FOIA, the SEC processes FOIA requests under different tracks. See 5 U.S.C. § 552(a)(6)(D)(i) (FOIA provides that "agency may promulgate regulations . . . providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests"); 17 C.F.R. § 200.80(d)(4) ("The [SEC's] Office of FOIA Services shall use two or more additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work and/or time needed to process the request."). This system allows the FOIA Office to process requests based on complexity and to manage the backlog of requests already pending. The FOIA Office typically uses 1,600 pages as the

threshold for an initial determination that a request will be processed in the complex track. That number serves as a guideline; when we review a request, we consider additional factors such as the nature of the documents. The FOIA Office processes the requests in the complex track first in, first out. When a request is placed in the complex track, the FOIA Office will start processing it once it reaches position 1 in the queue. When we process a FOIA request (both in the regular and complex tracks), we must search for potentially responsive records, review the identified records for responsiveness, apply redactions based on the FOIA exemptions, and consult with other offices within the agency and, as appropriate, with third parties.

In this case, we will issue a response to subpart 4 by April 11, and we can move forward processing the approximately 400 records returned by the re-run threaded subpart 1 search. We will need some more time to process re-run subpart 1 and propose responding to that subpart by May 9.

With respect to subparts 2 and 3, the volumes returned by those subparts are such that they qualify for processing in the complex track. My understanding is that Plaintiff has not agreed to narrow these subparts; rather, Plaintiff's position is that every record belonging to each requested custodian that contains "Ethereum" or "Eth" or "Ether" and also proof of stake or "PoS" or "the Merge" or "EIP-3675" would be responsive to the subparts. Additionally, Plaintiff has prioritized custodians for subpart 3 only, not narrowed the number of custodians whose records we must review.

In light of the volumes of returned records, your proposed release schedule is not workable and is not required under the FOIA. In particular, with respect to subpart 3, we have been raising the same concern about the timing of processing since plaintiff requested subparts 3 and 4 on February 5. Searching for and processing records take time, and we informed both plaintiff and the Court that the best approach would be for us to conduct the searches, share the volumes of results, and then discuss what timelines make sense for the responses to the additional subparts prior to agreeing to a timeline. In these circumstances, a maximum of 500 pages of records per month would be an appropriate processing rate. See, e.g., *Rolling Stone LLC v. U.S. Dep't of Just.*, No. 23-CV-10741, 2024 WL 3862521, at \*3 (S.D.N.Y. Aug. 19, 2024) (processing records at 500 pages per month is "a fairly standard" rate).

To answer your questions below:

1. Adding spaces in "the Merge" does not appear to modify the hit count. OIT (not I) ran the searches with the search terms "Eth" and "Ether", so running new searches for "Eth" and "Ether" with spaces would require new OIT searches. Based on searches within the universe of the OIT-returned records, however, I do not believe that the search terms containing spaces modify the hit counts.
2. Yes, our searches for subparts 3 and 4 include Microsoft Teams chats.
3. The search included the Chair's and Commissioners' public facing email addresses, which I think accounts at least in part for that gap. I can look into this further.
4. Each individual email within an email thread is an agency record for purposes of the FOIA. For example, if there is an email thread containing four emails, there would be four agency records total. After threading those four records, there would only be one record to release (the most complete, last-in-time email).
5. Subpart 2 was not limited by SEC custodian so would include Mr. Tenreiro. For subparts 3 and 4, I am looking into whether Mr. Tenreiro was in a covered position at a time encompassed by the searches. I'll follow up with you on this point.

As I mentioned previously, I think there are two paths forward. If plaintiff prefers not to continue working together to narrow subparts 2 and 3, then our position is that those subparts are in the complex track and will be processed accordingly. Should plaintiff dispute the processing of those subparts in the complex track, then we would seek from the Court an *Open America* stay of proceedings to allow for additional time for us to complete the processing of the requests.

Best,  
Alex

**From:** Harper, Nick [REDACTED]  
**Sent:** Monday, March 24, 2025 3:38 PM  
**To:** Verdi, Alexandra [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** RE: History Associates v. SEC

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Alex,

Thank you for this information. As we've explained in prior emails and status reports, we do not think that an extension of the Court's April 11 deadline with respect to subpart 3 is warranted based on the SEC's concerns about document volumes that should have been raised to the Court and History Associates immediately after the Court's February 11 order. As we've also discussed, we have serious concerns with the pace of the agency's responses to subparts 1 and 2, which (in our view) should have been completed months ago.

Nevertheless, we have been trying to work collaboratively with you to further prioritize portions of subparts 2 and 3, while making clear that these discussions should not delay the SEC's review of responsive documents—particularly documents responsive to subpart three that pertain to Gary Gensler, Jamie Lizárraga, Caroline Crenshaw, Gurbir Grewal, and David Hirsch.

Although we continue to believe that any further extensions are unwarranted, in an effort to accommodate the agency's stated concerns about document volumes, we are willing to agree to the following production schedule:

1. By April 11 the SEC:
  1. Responds in full to subpart 1
  2. Responds in full to subpart 4
  3. Responds in part to subpart 3 (documents sent by or to Gary Gensler, Jamie Lizárraga, Caroline Crenshaw, Gurbir Grewal, and David Hirsch)
2. By May 12 the SEC:
  1. In response to subpart 2, reviews and produces or withholds (with a Vaughn index) at least 5,000 records that the agency has not yet produced or withheld
  2. In response to subpart 3, reviews and produces or withholds (with a Vaughn index) at least 5,000 records that the agency has not yet produced or withheld for a further prioritized subset of custodians, including at least:
    1. Allison Lee; Amanda Fischer; Slavkin Corzo; Heather Lynn; Prashant Yerramalli; Anna Corina Klemmer; Lisa Kinney Helvin; Samantha Jill Ostrom; Victor Suthammanont; Jillian Harris; Stephanie Avakian; Sanjay Wadhwa; Kistrina Littman; Laura D'Allaird; Mark Sylvester; Valerie Szczepanik; Erik Gerding; Corey Frayer; and William Hinman
3. After May 12, History Associates will decide whether to seek further productions in response to subparts 2 and 3, and the parties will file a JSR by May 26.

If the SEC agrees to this schedule, we will incorporate it into the joint status report that the Court has ordered us to submit by Thursday. If the SEC does not agree to this schedule, we will submit this proposal to the Court in our portion of the JSR and will leave a placeholder for the SEC to provide its response.

Separately, we have some questions about the record counts and search methodology laid out in your email below. Please let us know the answers to these questions as soon as you can.

1. In conducting the searches below, has SEC has added spaces around the search terms “ Ether ” and “ ETH ” and “ the Merge ”, as we’ve suggested in the past? If not, why has the agency not done so? Omitting the spaces seems likely to result in a significant number of false positives (e.g., words like “whether” and “the merger”).
2. Has the SEC searched Microsoft Teams chats in response to subparts 3 and 4, as it has for subpart 1? As we explained in our February 4 JSR, the SEC should be searching collaboration platforms such as Teams.
3. The custodian-by-custodian hit counts for subpart 3 you sent us (and which you said are *pre*-threading counts) are much lower than the document counts for subpart 3 that you provided us in your email (which are *post*-threading counts). The custodian-by-custodian count is around 36K (with families), whereas the count below (with families) is around 68K. Why is there such a large difference between these numbers?
4. You say in your email below that “threading could potentially eliminate agency records.” Do you mean that threading could eliminate unique emails entirely from the production, or that it might eliminate duplicate emails that technically would count as separate “records” for FOIA purposes?
5. The list of custodians you provided does not include Jorge Tenreiro, who was at one point the Acting Chief of the SEC’s Crypto Assets and Cyber Unit. Were records related to Mr. Tenreiro searched in response to subparts 2 to 4? If not, please ensure that Mr. Tenreiro’s records are searched and included in any productions.

Thanks,  
Nick

**Nick Harper**  
Partner

[REDACTED]

**GIBSON DUNN**

Gibson, Dunn & Crutcher LLP  
1700 M Street, N.W., Washington, D.C. 20036-4504

---

**From:** Verdi, Alexandra [REDACTED]  
**Sent:** Thursday, March 20, 2025 8:52 PM  
**To:** Harper, Nick [REDACTED]  
**Cc:** Bond, Jonathan C. [REDACTED]  
**Subject:** History Associates v. SEC

Hi Nick,

I am writing regarding narrowed subparts 1-3. Below please find the hit results post-threading. I’ve also attached the hits by custodian for subpart 3 and note that those searches were run in the non-threaded results.

I also note that, in FOIA cases, we do not automatically apply threading to emails returned by searches because, under the FOIA, each individual email may be considered an agency record, and threading could potentially eliminate agency records. As a result, we only apply threading when the requester agrees to do so.

As you will see, the volumes of records are still very high such that the request qualifies for the complex track. Rather than briefing the issue of whether we are entitled to an *Open America* stay, I think it makes sense to focus our resources on figuring out ways to narrow the results, perhaps by custodian and by date range. One issue is that the two sets of search terms might not appear in the same record and therefore result in unresponsive returned records. For example, one email could attach three records, and proof of stake might be in attachment one and Ethereum might be in attachment three. One way to narrow the results to a universe of records that are likely to be responsive is by running proximity searches. I think it makes sense for us to work together so that we can process a manageable volume of records and provide responses as soon as practicable.

Also, as I mentioned before, we are moving forward with the processing of subpart 4 and will provide a response by April 11.

Best,  
Alex

#### Re-run narrowed subpart 1

Subpart 1 seeks “all email correspondence and Microsoft Teams messages to/from Chair Gensler containing the search terms “Ethereum”, “ETH”, or “Ether” from January 1, 2018 through present.”

<b>Records Searched</b>	<b>Hits on “Ethereum”, “ETH”, or “Ether”</b>	<b>Hits on Additional Search Terms</b>	<b>Hits on Additional Search Terms Post-Threading (proof w/3 stake) OR “PoS ” OR “the Merge” or “EIP-3675”</b>
Chair Gensler Emails	3482 records with families  Post-threading: 551 records (1187 records with family)	Proof w/3 stake → 499 records with families “PoS” → 449 records with families “the Merge” → 441 records with families “EIP-3675” → 0 hits TOTAL HITS: 1389 records with families	135 records (350 records with family)
Chair Gensler Calendar	56 records		
Chair Gensler Microsoft Teams Chats	0 records		

#### Re-run narrowed subpart 2

Subpart 2 seeks “all email correspondence from SEC staff to external individuals containing the search terms “Ethereum”, “ETH”, or “Ether” from January 1, 2018 through present.”

<b>Records Searched</b>	<b>Hits on “Ethereum”, “ETH”, or “Ether”</b>	<b>Hits on Additional Search Terms</b>	<b>Hits on Additional Search Terms Post-Threading (proof w/3 stake) OR “PoS ” OR “the Merge” or “EIP-3675”</b>
SEC staff to external email addresses	121,512 records (including families)	Proof w/3 stake : 3898 records with families “PoS” : 18120 records with families	3024 records (39486 records with family)

	Post-threading: 115397 records including family	“the Merge” : 30408 records with families “EIP-3675” : 26 records with families TOTAL: 52,324 records including families	
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Subpart 3

Subpart 3 seeks “all documents and communications sent to or by all former SEC Commissioners, their counsels, the Director of the Division of Enforcement, the Director of the Crypto Asset and Cyber Unit, the Director of the Office of the Strategic Hub for Innovation and Financial Technology, and the Director of the Division of Corporation Finance that discuss or analyze whether Ether (or “ETH” or “Ethereum”) is a security or whether transactions in Ether (or “ETH” or “Ethereum”) are securities transactions, and that contain the words “proof-of-stake” (or “PoS,” “the Merge,” or “EIP-3675”).”

Records Searched	Hits on “Ethereum”, “ETH”, or “Ether”	Hits on Additional Search Terms	Hits on Additional Search Terms Post-Threading (proof w/3 stake) OR “ PoS ” OR “the Merge” or “EIP-3675”
Emails	420,213 records (including families)  Post-threading: 184349 records (366078 including families)	Proof w/3 stake → 41393 records with families “ PoS ” → 33763 records with families “the Merge” → 35918 records with families “EIP-3675” → 205 records with families TOTAL: 111,279 records with families	25004 records (68746 with families)
Calendars	25,552 records	Proof w/3 stake → 6312 records with families “ PoS ” → 5921 records with families “the Merge” → 5331 records with families “EIP-3675” → 20 records with families TOTAL: 17,584 records with families	

**Alexandra Verdi**

Office of the General Counsel



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